

## DEPARTMENT OF STATE REVENUE

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### LETTER OF FINDINGS NUMBER: 97-0562 RST

#### Sales Tax

For The Period: 1995

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#### ISSUE

##### **I. Sales Tax - Hot Tub.**

Authority: IC 6-2.5-5-18, 45 IAC 2.2-5-28(h)

Taxpayer protests the sales tax charge on the purchase of a hot tub.

#### STATEMENT OF FACTS

The taxpayer is an individual with chronic low back pain, shoulder pain, and tendinitis of elbows. The taxpayer purchased a multiple seat spa on October 25, 1995 for \$3,395. The spa was purchased exempt from sales tax based on a prescription originally written by a chiropractor. The Department disallowed the exemption in August 1996. Taxpayer protested the assessment of sales tax on the purchase of the spa in November 1996. The Department requested a copy of the doctor's prescription, the cost of a "1" seat spa versus a "multiple" seat spa, and a copy of the sales invoice. In February 1997, the Department offered to allow a one-fourth exemption on the purchase of the multiple seat hot tub. The taxpayer rejected the Department's suggestion in March 1997 and requested a hearing. In August 1997 taxpayer was requested to furnish a prescription written by a physician as a chiropractor is not a medical doctor. Taxpayer furnished a prescription written by a physician. The hearing was held on September 15, 1997. The taxpayer was advised on September 16, 1997 that the taxpayer would be entitled to a 50% exemption as two people are using the hot tub and only one person has the medical exemption. The taxpayer was advised in October 1997 that the Department's policy is that hot tubs are taxable; however, the Department would grant an exemption if the taxpayer provides a detailed description from a licensed practitioner (not a chiropractor) which explains the medical need for the hot tub. The taxpayer furnished a letter from a physician which states "taxpayer is a patient of mine who suffers from osteoarthritis, chronic low back pain, shoulder pain and tendinitis of elbows. It is my medical opinion that he would benefit from the use of a hot tub."

#### DISCUSSION

IC 6-2.5-5-18(a) states:

"Sales of artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, contact lenses, and offer medical equipment, supplies, and devices are exempt from the state gross retail tax, if the sales are prescribed by a person licensed to issue the prescription."

It should be noted that exemption statutes, like the one in question, must be construed against the taxpayer. The initial inquiry is whether "medical equipment, supplies, and devices" under IC 6-2.5-5-18(a) includes a hot tub. The Department's regulation, 45 IAC 2.2-5-28(h), define the exempt article to be "those items, the use of which is directly required to correct or alleviate injury to, malfunction of, or removal of a portion of the purchaser's body." The question, in this case, is whether the hot tub is directly required to correct or alleviate the taxpayer's chronic low back pain. The plain meaning of "directly" is used to modify the effect one thing has on another is without any intermediate step. Leland H. Stump v. Indiana Department of Revenue unpublished opinion, Ind. Tax Ct. 1993). In Stump, the Court said there was "nothing inherently healing or remedial about a van that would make it appropriate only for handicapped people; a van itself does not have any direct alleviating effect on an amputee's condition."

The question then is whether there is anything healing or remedial about a hot tub that would make it appropriate only for handicapped people and whether a hot tub has a direct alleviating effect on the taxpayer's condition. The plain, ordinary meaning of a whirlpool, a similar device, is a water bath in which the water is agitated by an electric turbine. Medical books state that hydrotherapy has been advocated for the treatment of joint stiffness, painful scars, adhesions, and arthritis. Water therapy is also used for the effects on body tissues of heating, cooling, debridement, pain relief, and relaxation of muscles. Hydrotherapy achieves its desired effects through physical properties of water temperature and agitation. In this case, a physician has stated that the patient would benefit from the use of a hot tub and the taxpayer has stated that he has been relatively pain free since using the hot tub.

In this case, a physician and the taxpayer has certified in writing that use of the hot tub is necessary to the taxpayer in order to correct or alleviate a condition brought about by an injury and has a direct alleviating effect on his osteoarthritis and chronic low back pain.

### **FINDING**

The taxpayer's protest is sustained. Taxpayer has established that, in this case, the hot tub has a direct alleviating effect on his medical condition.